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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-971

WARDEN, New Jersey State Prison, Rahway,
Petitioner,

vs.

UNITED STATES OF AMERICA,
ex rel. WILLIAM R. MONKS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on December 11, 1972, affirming the Order of the United States District Court for the District of New Jersey, which granted an application by Relator, William R. Monks, for a writ of habeas corpus.

Opinions Below

The order of affirmance of the United States Court of Appeals for the Third District was entered without writ-

ten opinion, and is reproduced in the Appendix hereto (1a). The order and opinion of the United States District Court for the District of New Jersey which granted the application for writ of habeas corpus has been officially reported at 339 F. Supp. 30 (D. N. J. 1972) and is also reproduced in the Appendix hereto (2a to 12a).

The opinion of the Appellate Division of the Superior Court of New Jersey entered March 27, 1968, affirming the adjudication of juvenile delinquency as to William R. Monks entered in the Juvenile and Domestic Relations Court of Passaic County, is unreported. It is reproduced in the Appendix hereto (13a-20a) as in the Order of the Supreme Court of New Jersey entered May 28, 1968, denying petition for certification. 51 N. J. 578 (1968) (21a).

The Statement of Findings and Conclusions made by the Juvenile and Domestic Relations Court of Passaic County is included in the Appendix hereto (22a to 29a).

On May 19, 1969, the Supreme Court of the United States granted certiorari to review the judgment of affirmance entered by the Appellate Division of the Superior Court of New Jersey, 395 U. S. 903, 23 L. Ed. 2d 216 (1969). On May 25, 1970, the Court entered an Order dismissing the writ of certiorari as improvidently granted, and filed a per curiam opinion which is reported at 398 U. S. 71, 26 L. Ed. 2d 54, 90 S. Ct. 1563 (1970). The Order and opinion are reproduced in the Appendix hereto (30a to 34a).

Jurisdiction

The judgment of the United States Court of Appeals for the Third Circuit was entered on December 11, 1972. This petition for writ of certiorari was filed within thirty days of that date. The Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

Question Presented

Does the record of the state court proceedings justify the finding by the United States District Court, affirmed by the Court of Appeals, that oral and written confessions made by a juvenile suspect, and admitted at his hearing, were involuntary as being the product of police coercion?

Constitutional and Statutory Provisions Involved

This matter involves the following portions of the Fifth Amendment to the United States Constitution:

> [N]or shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law . . . .

and the Fourteenth Amendment to the United States Constitution:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .

Statement of the Case

1. Basis for Federal Jurisdiction

The petition for writ of habeas corpus filed by Relator William R. Monks in the United States District Court for the District of New Jersey on August 10, 1970, asserted that he was being held in custody unlawfully in that his adjudication of delinquency and consequent confinement were based upon admission at his trial of confessions, and evidence derived therefrom, that were extracted involuntarily from him by the police, in violation of the Due Process Clause of the Fourteenth Amendment.

The United States District Court found that Relator had exhausted his available state remedies, and that the only issue before it was the voluntariness of his confession, to be determined upon the basis of the state court record.

2. History of Proceedings

On March 1, 1957, William R. Monks, who was then 15 years of age, was charged in a petition filed in the Juvenile and Domestic Relations Court of Passaic County with being a delinquent child in that he on November 12, 1956, in the course of an assault and battery struck one Giovanna Giambra with a blunt instrument, causing her death. Another petition filed the same date charged him with delinquency for a similar assault on one Naomi Weiss on February 24, 1956, which led to her prolonged hospitalization.

A hearing was held on both petitions in that court in December, 1957, the juvenile being represented by two court-appointed attorneys. There followed a finding by the court that William Monks was in fact responsible for both offenses, and he was committed to the New Jersey Reformatory for an indeterminate term (26a to 28a). Following an amendment to the New Jersey Juvenile Court Act, the Juvenile Court held a hearing and determined that the offense involving Giovanna Giambra was equivalent to murder in the first degree, and the assault on Naomi Weiss was equivalent to the crimes of robbery and assault and battery.

His committment with respect to the latter offense terminated on his 21st birthday, October 30, 1962. Since the underlying charge of homicide called for a term of life imprisonment, he was then transferred to the New Jer-

sey State Prison to continue his confinement as to the Gambr offense.

Although a timely notice of appeal was filed after his adjudication, it was not perfected until more than nine years later, when he obtained leave to appeal in *forma pauperis* to the Appellate Division of the New Jersey Superior Court. Following the denial of that appeal (13a to 20a) and denial of a petition for certification (21a) Monks on August 19, 1968 filed a *pro se* petition for certiorari, which was granted by this Court on May 19, 1969. That writ of certiorari was dismissed by the Court on May 25, 1970, as having been "improvidently granted, without prejudice to any further appropriate proceedings below." (32a to 34a).

The Court in its per curiam opinion noted that one of the claims which had been raised by the petition, involving N.J.S. 2A:4-37(b) pertaining to the application of sentence procedures, had not previously been presented to the state courts (32a).

His petition for writ of habeas corpus in the United States District Court was filed on August 10, 1970. A hearing thereon was held on January 14, 1972, and the Order granting the writ was entered on March 6, 1972 (12a). Upon appeal by the Warden, New Jersey State Prison, to the United States Court of Appeals for the Third Circuit, that judgment was affirmed on December 11, 1972 (1a).

On April 12, 1972, William R. Monks had been released on bail. Earlier, the New Jersey Parole Board disclosed its intention to release him on parole as of June 12, 1972.

3. Factual Background

The respective assaults on Naomi Weiss, age 42, and Giovanna Giambra, age 25, took place on the street in the same locality of the City of Paterson, some nine months apart. In each instance the victim was struck over the head by a blunt object and her handbag taken. Naomi Weiss did not see her assailant, and Giovanna Giambra, before she succumbed to her injuries, could only describe him as a man wearing a dark leather jacket.

Three months after the latter incident, on February 15, 1957, Detective Joseph Meola of the Paterson Police was investigating two purse snatchings which had occurred that evening, and took into custody William Monks, who for some time had not been living at his parents' home located in the general vicinity where these incidents had occurred. Monks was located by the officer at about 1 a.m. on the 16th and readily admitted the thefts on the preceding evening and showed the officer where he had buried the purses.

A newspaper account of the incident which related the fact that the juvenile had buried the purses attracted the attention of Detective Vincent DeSimone of the Passaic County Prosecutor's Office and Detective Peter Ventimaglia of the Paterson Police Department, who were assigned to the investigation of the as yet unsolved Weiss and Giambra assaults and who knew that the purses stolen in those incidents had never been recovered.

The two detectives therefor applied to a judge of the Juvenile and Domestic Relations Court, which had custody of Monks because of his arrest on the latest purse snatchings and because of his prior probationary status in that court, for permission to question him relative to the Weiss and Giambra assaults. This permission was

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granted by the court, with the stipulation that any questioning of Monks was to be done in the presence of a probation officer specially assigned by the court for that purpose.

Accordingly, on February 18, 1957, the two detectives and the probation officer went to the Children's Shelter, where they spoke with Monks for no more than one hour. The juvenile admitted various purse snatchings in the Eastside area of Paterson, but his specific knowledge of details relative to the Weiss and Giambra incidents which had occurred in that locale, and the manner in which he denied involvement in those incidents aroused the suspicion of the officers. They therefore asked him if he would be willing to take a lie detector test, to which he replied "Oh, sure, they are false, they can't tell you nothing."

As a result, the officers made arrangements to have a polygraph examination made by Richard Arther, director of the New York office of John E. Reid and Associates, an organization specializing in the conduct of polygraph examinations.

During the next two days, the juvenile remained at the Shelter and the detectives did not see him again until February 21, 1957, when the arrangements for the polygraph examination had been made.

On the afternoon of February 21st, Monks was brought to the Court House by Probation Officer Jarmolowicz and was taken to the anteroom of the Grand Jury room where Mr. Arther set up the polygraph. The tests were begun at 4 P.M., shortly after Monks arrived, and were terminated at 5:30 P.M. There were three series of tests at that time, each test proper taking between one and two and one-half minutes.

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Arther gave instructions to the police officers that they were not to question or talk to the juvenile until he had another opportunity to test him, and as a result the officers did not conduct any questioning until the afternoon of February 26, 1957. The juvenile was then returned to the Children's Shelter.

Monks remained at the Children's Shelter until February 26, 1957, when Arther was again available to conduct further tests on the polygraph.

On that date, Probation Officer Jarmolowicz picked up Monks at the Shelter sometime after 9 A.M. and transported him to the same area of the Courthouse where the previous tests had been conducted on the 21st, arriving there shortly after 10 A.M. The three officers who were investigating the Weiss and Giambra incidents, Detective De Simone, Ventimiglia and Meola, were present when he arrived, but did not speak to him.

As was the case on the previous occasion, Monks was examined by the polygraph operator Richard Arther, alone, in the Grand Jury room, which was a converted small courtroom. This session lasted, according to the recollection of Detective De Simone, between one and a half to two and a half hours, until around noon, when food was provided for the juvenile and the officers. Although they ate together, there was no questioning by the officers.

Following lunch, Monks was allowed to sit by himself while the officers conferred with Mr. Arther, and as a result, one Harry Ogg, a juvenile acquaintance of Monks was brought to the Courthouse at about 2:30 P.M. Ogg was then tested on the polygraph for approximately a half hour, and as a result thereof was brought into the room where Monks was sitting. Monks, who had left his

parents home some 8 weeks before he was taken into custody, had for a portion of that time lived in "Harry Ogg's cellar," and had taken some of his meals at his home.

When Ogg was brought into the presence of Monks, he repeated that Monks had told him the morning after the Weiss assault that he was involved and showed him money ostensibly taken at that time.

Following this, Arther conducted another brief examination of a half hour or less with Monks, which was concluded about 3:30 P.M. At that point, Detective De Simone began the first police questioning of the juvenile since the initial brief session which had been conducted at the Children's Shelter on February 18th. The questioning took approximately one half hour, and Monks admitted that he was responsible for the Weiss assault, and recounted various details of the same.

Since he stated he had buried a package taken from her, the juvenile and the three officers left by car for the area. Monks described how he had accosted the victim and how he had gone to a nearby boarding house to examine the objects he had stolen. The officers spent some time in futilely digging up a portion of the yard, with Monks then recanting his admission and stating he had made the whole thing up. The trip took about an hour, and he was returned to the Courthouse about 5:30 P.M. During this trip Probation Officer Jarmolowicz, for the first time, was not present with him.

At approximately 6:30 p.m., Robert Stopford, another youthful acquaintance of Monks, was brought to the Courthouse and given a polygraph examination. During the interval spent waiting for Stopford to arrive and while the latter was being tested, Monks remained with the officers, but was not interrogated.

After Stopford was tested, he, as had Harvey Ogg previously, went into the room where the juvenile was sitting and repeated that Monks had told him that he was responsible for the Weiss assault, at which point Monks did not answer but "just lowered his head onto the table".

At this point, Detective De Simone, for only the second time that day and the third time in all, questioned Monks, again for about a half-hour. This questioning was carried on in a subdued manner so that it was barely audible to detective Ventimiglia and Probation Officer Jarmolowicz, and was characterized as a "father and son talk". During this talk, the detective went into various aspects of what the police knew and believed about his involvement, and asked him to tell the truth, and to admit it if he had done it, but not admit it if he had not.

Following this talk of less than a half-hour, the detective left to get food for himself and the juvenile, only to be summoned back from a luncheonette across the street a short time later because Monks had requested to speak to him alone. This request had followed a further brief polygraph examination given by Arther during which he had showed Monks a replica of a key which had been in the purse of Giovanna Giambra when it was taken, and had gotten Monks to admit that he had hit her.

When De Simone returned to the Courthouse, Monks then made an oral admission to him with respect to the Giambra assault, in which he described the sequence of the incident, using a sketch of the locale which had been prepared for the investigation, to illustrate the pertinent details.

After Monks made this admission, there was an interlude during which he and the officers had sandwiches, pie, milk and coffee. Following this, Monks then repeated his admission to the Giambra offense to the three officers

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and in the presence of Probation Officer Jarmolowicz and Richard Arther as well.

Having obtained oral admissions, the officers notified the prosecutor and a court stenographer was sent for. Although the oral admission in the presence of the officers had been given around 8:46, the delay in arrival of the stenographer put off the transcription of formal, typed statements until later that evening. The formal statements, which detailed at length the respective offenses, were read into the record and admitted into evidence at the juvenile court hearing.

4. The Findings by the United States District Court on the Coerced Confession Issue

The District Court, on the basis of the state court record of the proceedings against William Monks, made various factual and legal findings which culminated in the ultimate finding that, in the totality of the circumstances, the confessions of Monks were obtained by police coercion and therefore were improperly admitted into evidence.

The District Court found that the detention of the juvenile at the Children's Shelter amounted to an incommunicado confinement, because during some ten days he had no contact with his family, friend, or lawyer, nor was he informed by the police that he could communicate with anyone.

The Court further found that at the time Monks "finally relented and confessed," he had undergone some six hours of intermittent interrogation extending over fifteen hours of police custody that day. The Court found that the juvenile's long detention without any fixed time or expectation of release and respite from incommunicado confinement created the unmistakeable impression that he would

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be held at the pleasure of the police until he confessed. The technique of interrogation employed by the police was likewise found to be inherently coercive.

The District Court also found that the probation officer specially appointed by the Juvenile Court "plainly failed to fulfill his prophylatic purpose of insulating his charge from the pressures of a prolonged interrogation."

Reason for Granting the Writ

The finding by the United States District Court that the confessions of the juvenile were involuntary because they were coerced by the police is not factually justified by the record of the proceedings, and such ruling and the affirmance thereof by the Court of Appeals for the Third Circuit is a clear departure from the test set forth by this Court in *Gallegos* v. *Colorado* and in *Haley* v. *Ohio*.

The issue presented to the District Court by the petition for writ of habeas corpus was whether the confessions made by the juvenile to the police on February 26, 1957, were voluntary, "the product of an essentially free and unconstrained choice by [the] maker." *Culombe* v. *Connecticut*, 367 U. S. 568, 602, 6 L. Ed. 2d 1037, 1057, 81 S. Ct. 1860 (1961).

The Juvenile and Domestic Relations Court of Passaic County, which presided over the hearing for the juvenile on a petition charging two serious offenses, made a factual determination that the admissions made by the juvenile were voluntary. This determination was made following a hearing wherein the juvenile was represented by two highly competent assigned attorneys, and the record discloses that the proceedings which extended over several days, were conducted fully in accord with due process.

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The findings made by the hearing judge were fully reviewed upon the entire record by the Appellate Division of the Superior Court of New Jersey, which found that in the totality of the circumstances, the police interrogation was fair, and the resultant confessions were voluntary. The juvenile hearing was conducted in December, 1957, long prior to the decisions of this Court in *Escobedo* v. *Illinois,* 378 U. S. 478 (1964) and *Miranda* v. *Arizona,* 384 U. S. 436 (1966), so that the specific standards required by those cases were not applicable. *Johnson* v. *New Jersey,* 384 U. S. 719 (1966).

While the New Jersey Supreme Court did not make a plenary review of the proceedings, it did pass upon a petition for certification in 1968, determining that there was no basis for reviewing the Appellate Division affirmance. This consideration was made in light of the standard set by the same court in formulating the leading New Jersey decision pertaining to juvenile confessions, some two years earlier. *State in the Interest of Carlo,* 48 N. J. 224 (1966). It might be noted that the United States Supreme Court, after having inititally granted a writ of certiorari upon Monks' *pro se* application, and after having "scrutinized" the record, considered the briefs and heard oral argument on the same facts and questions later reasserted in the United States District Court, found that the petition did not merit plenary review (32a to 34a).

28 U.S.C. § 2254 (d), the provision governing relator's petition for habeas corpus, states that the factual determination made by the state court is presumed to be correct, unless "the applicant shall establish or it shall otherwise appear . . ." there was a denial of due process in the state hearing, or that upon the record or pertinent part of the proceedings, the federal court "concludes that such factual determination is not fairly supported by the

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record." See *Brown* v. *Allen*, 344 U. S. 443, 506-509, 97 L. Ed. 469, 514-516, 73 S. Ct. 397 (1952).

We respectfully submit that an examination of the state court record, which was considered by the District Court some fifteen years after the hearing, will disclose no factual basis for the determination made by the District Court that the confessions admitted against the juvenile were the product of police coercion.

The questioning of the juvenile in this case, initially took place at the Children's Shelter where he was being held on other purse snatching charges, as a probationer known to the Juvenile Court. The brief polygraph examination conducted three days later, and the questioning on February 26, 1957, were done at an unused courtroom substituting for a grand jury meeting room, and located in the courthouse building. This setting might be contrasted to the use of the police station or jail as the locale for questioning of a juvenile. *Haley* v. *Ohio*, 332 U. S. 596 (1948); *State in the Interest of Carlo*, 48 N. J. 224 (1966).

A more important distinguishing factor in this case was the specific appointment by the Juvenile Court of a probation officer, Chester Jarmolowicz, to act as a guardian *pro tem* of the juvenile during the time he was being questioned by the authorities. At the time he was appointed, Jarmolowicz, who was then known by the juvenile, had almost fifteen years experience in the Probation Department and had been dealing with juveniles some ten years.

Thus, he was assigned and served as the juvenile's guardian *pro tem* during the time he was questioned, respectively, on February 18, 21 and 26, 1957. Jarmolowicz at the hearing testified that he had been told by the Juvenile Court that he "was to be there with him [William Monks] to look out to see to it that he was not brow-

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beaten or abused in any way or pushed to any extreme." We submit that an examination of the record will disclose that the probation officer in fact served this function, since there was no actual overt or indirect coercion, intimidation, browbeating or duress employed against the juvenile.

The hearing court (Judge Spernow) recognized the function of Jarmolowicz when he obs rved:

> Mr. Jarmolowicz is a probation officer of many years experience handling juveniles. The Court (Judge Schamach) reposed this confidence in Mr. Jarmolowicz, and I have confidence in him as well, so that I know that there was no imposition upon William Monks during this questioning.

The provision by the Juvenile Court for such a guardian, and his presence during the investigative questioning procedure, in fact directly and significantly distinguishes this case from those which were relied upon in the application for writ of habeas corpus, and which deal with both juveniles and adults. In none of those was there even a neutral party present during the questioning, much less a court officer specially directed by the court to insure that the questioning was kept in bounds.

Faced with this distinguishing facet, the relator in his application for writ of habeas corpus chose to suggest, infer and state that the probation officer, despite his experience and the explicit direction by the court, allowed the police officers leeway to coerce a confession from a totally unwilling juvenile, while he stood idly by. We submit that there is nothing in the record of the state proceedings, which must be the basis of the federal court review, to substantiate such an allegation, or to refute the confidence which was reposed in the officer by two judges of the Juvenile Court. We further respectfully submit that

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the record provides no basis for the finding by the United States District Court that the officer plainly failed to fulfill the duties which had been given him in that regard.

Much significance was accorded by the District Court to the fact that the juvenile, who was then fifteen years old, had no contact with his family during the ten day period that he was held at the Children's Shelter.

A reading of the record of his own testimony in the Juvenile Court proceedings discloses that at that point of his life, Monks did not consider his family attachments significant. One of eleven children, he had severe discipline problems at home. His father would lock him in his room whenever he did something wrong, and on the very night of the Giambra assault he had apparently left the house by sneaking out. He hung around a candy store, was a proficient purse snatcher, and a truant.

Prior to his arrest for other purse snatchings, which initiated the further investigation, he had not been living at home for several weeks. He was then living at the home of a married couple whose relationship to him is not clear, and previous to that had lived in his friend, Harry Ogg's cellar, for two or three weeks. At times he stayed in parked cars all night, it being too cold to sleep. He ate wherever he could and at times skipped meals.

In view of this, it is consistent to suggest that his detention at the Children's Shelter was an equivocal experience to him, inconventient or apprehensive only because his freedom to come or go as he pleased was curtailed. The suggestion that his detention for ten days, as in the custody of the Juvenile Court, and his lack of contact with his family, was a material factor in psychologically debilitating him so he would be unable to resist coercive suggestions by the police, does not square with the picture presented by the record.

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The record further discloses that the actual questioning of the juvenile was neither prolonged, intensive nor coercive.

It cannot even be inferred from the record that the initial questioning of the juvenile, two days after he had been detained on other purse snatchings, was coercive. It was brief, lasting under an hour, and Monks agreed to take a lie detector test quite willingly, expressing his disdain for its utility. The specially appointed probation officer was present, and the questioning was low key, as it was on the one other day the police questioned the juvenile.

Three days later Monks was brought by the probation officer to the grand jury meeting room to take the polygraph test to which he had agreed. Mr. Arther conducted a series of three tests which took between one and two and one-half minutes apiece, and involved a period of preliminary questioning. Only the examiner and subject were present at the test, and although the detectives who had spoken to the juvenile three days earlier were present outside, they did not speak at all to him that day. His stay at the Courthouse lasted about one and one-half hours.

On February 26, 1957, five days after having been volunutarily tested on the polygraph and a week after he had last spoken to Detectives De Simone and Ventimiglia, Monks was again brought to the Courthouse, arriving at about 10 a.m.

However, it was not until about 3:30 p.m. that there was any police questioning of Monks, conducted in a low-key manner primarily by Detective De Simone. Prior to that, he had been tested on the polygraph by Mr. Arther, the civilian expert, in the same manner as he had five days earlier. The detectives and the probation officer remained outside the room. At noontime, lunch was served

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to Monks and to the others in the converted Grand Jury Room.

About 2:30 p.m., the juvenile's friend, Harry Ogg, was tested by Arther out of Monks' presence, and afterwards "confronted" him in the anteroom to remind him that he had admitted to him (Ogg) responsibility for the Weiss assault. There then followed one further brief polygraph session with Arther, after which the first actual police questioning, or even conversation with Monks, in over a week, began.

During a question period of no more than one-half hour to forty-five minutes, Monks admitted to the detectives and the probation officer details of the Weiss offense. Indications are that this questioning, too, was done in conversational tone. During this questioning, the juvenile identified from among five pocketbooks, the one which was identified as being identical to the one taken from the victim at the time of the mugging.

Following this brief, initial questioning and admission, Monks accompanied the three detectives on a drive to the area where the mugging had taken place. A good portion of the time was consumed while two of the detectives futilely dug up a yard looking for the contents of a pocketbook he said had been buried there. Monks then stated that his confession was "made up", and the parties returned to the Courthouse at about 6 p.m.

At this point, the other neighborhood friend (Stopford) to whom Monks had confided responsibility for the Weiss assault, was given a polygraph examination, following which he also confronted Monks with such previous admission. Then, Detective De Simone, for only the second time that day and the third time in all, questioned Monks in a low, subdued monotone, that was subsequent-

ly characterized at the hearing as a "father and son talk." He left the juvenile with a request to "search his conscience," while he went to obtain sandwiches and beverages for them.

Another brief polygraph test was then conducted by Arther, in the course of which Monks stated he wished to see De Simone and tell the story. This occurred at about 8 p.m. and was an admission of the Giambra assault, which took about ten or fifteen minutes to relate.

Although there were further details set out subsequently and because of a delay in getting a stenographer, the taking of a formal, typewritten statement was not completed until some hours later, the crucial admission was made at that time. Other than the polygraph tests administered by Arther, somewhat more than a total of one hour of low key questioning, primarily by Detective De Simone, in two widely spaced one-half hour sessions, had been conducted.

Subsequently, the juvenile appeared to those present to be relieved and less tense. He ate dinner, following which he repeated his confession of the Giambra matter in more detail. After the stenographer arrived, formal statements were typed.

Admissions and confession of juveniles require special caution, and the privilege against self-incrimination applies to juveniles. *Re Gault*, 387 U. S. 1, 45-48, 18 L. Ed. 2d 527, 556-58, 87 S. Ct. 1428 (1967). With respect to juveniles, common observation and expert opinion emphasize that "distrust of confessions made in certain situations" is imperative in the case of children from an early age through adolescence. *Id.* at 387 U. S. 48, 18 L.

Ed. 2d 557. In the absence of counsel at the time an admission is obtained, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, frights or despair. *Id.* at 387 U. S. 55, 18 L. Ed. 2d 561.

The circumstances leading up to the confession made by the juvenile in this matter, upon objective analysis, reveal neither coercion nor that degree of concentrated physical or psychological pressure which would place this case in the same league as those relied upon in his application to the District Court. See, *e.g.*, *Haley* v. *Ohio, supra; Gallegos* v. *Colorado,* 370 U. S. 49 (1962); *Greenwald* v. *Wisconsin,* 390 U. S. 519 (1968); *Clewis* v. *Texas,* 386 U. S. 707 (1967); *Haynes* v. *Washington,* 373 U. S. 503 (1963); *Spano* v. *New York,* 360 U. S. 315 (1959).

The procedure employed by the police in this matter, although it utilized the use of polygraph tests which the juvenile voluntarily took, was not intensive or overbearing, and the presence of the court-appointed special guardian negates relating this case to those where the Court speaks of "confessions obtained through unobserved police interrogation." *Davis* v. *North Carolina,* 384 U. S. 737 (1966).

CONCLUSION

For the reasons included herein, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JOSEPH D. J. GOURLEY,
Passaic County Prosecutor,
Attorney for Petitioner,
New Court House,
Paterson, New Jersey.

JOHN P. GOCELJAK,
Assistant Prosecutor,
Of Counsel with Petitioner.

[APPENDICES FOLLOW].

APPENDIX A

Order of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-1416

UNITED STATES OF AMERICA ex rel WILLIAM R. MONKS

v.

WARDEN, NEW JERSEY STATE PRISON at RAHWAY,

Appellant.

(D. C. Civil Action No. 1073-70)

Argued December 11, 1972

Before SEITZ, *Chief Judge*, ALDISERT, and ROSENN, *Circuit Judges*.

ORDER

After consideration of the contention by the Government that appellee's confession was voluntary, and the opinion of the district court finding the confession involuntary,

It is ORDERED that the judgment of the district court is hereby affirmed. Costs taxed against appellant.

By the Court,
COLLIN J. SEITZ
Chief Judge

DATED: December 11, 1972

APPENDIX B

Memorandum and Order of District Court Granting Writ of Habeas Corpus (March 6, 1972)

CIVIL ACTION No. 1073-70

UNITED STATES OF AMERICA *Ex Rel.* WILLIAM R. MONKS,

Relator,

vs.

WARDEN, NEW JERSEY STATE PRISON AT RAHWAY,

Respondent.

Appearances:

Richard Newman, Attorney for Relator,
Of Counsel: Anthony G. Amsterdam (D.C. Bar);

Joseph D. J. Gourley, Passaic County Prosecutor,
Attorney for Respondent,
By: John P. Goceljak, Assistant Prosecutor.

AUGELLI, Chief Judge:

This is an application by relator, William R. Monks, for a writ of habeas corpus. After a hearing before the Juvenile and Domestic Relations Court of Passaic County, relator was found guilty of the robbery and murder of Giovanna Giambra, as well as the assault and robbery of Naomi Weiss, and adjudged a delinquent. On March 1, 1957, relator was sentenced to an indeterminate prison term. He was then 15 years old. Relator is presently in state custody, serving a life sentence under N.J.S.A. 2A:4-37, which provides that a juvenile adjudged guilty

of murder shall not be imprisoned in excess of the maximum term for an adult.

Relator challenges the legality of his confinement solely on the ground that confessions made by him, and admitted into evidence at the Juvenile hearing, were elicited by coercion contrary to federal constitutional standards.[1]

On his appeal the Appellate Division of the New Jersey Superior Court considered and rejected, in an unpublished opinion, that specific argument (A.1549-66-March 27, 1968). Two months later, on May 28, 1968, the New Jersey Supreme Court denied Monks' petition for certification (51 N. J. 578). Consequently, the petitioner has exhausted his available state remedies, *Brown* v. *Allen*, 344 U. S. 443 (1953); *Fay* v. *Noia*, 372 U. S. 391 (1965); *Picard* v. *Connor*, 40 L. W. 4088 (1971).[2] Counsel for the parties have agreed that no evidentiary hearing is necessary, and that the only issue involved is the voluntariness of relator's confessions, which this Court is asked to determine on the basis of the state court record.

The state court record disclosed the following facts: On February 16, 1957, relator was awakened from his sleep at 1:00 A.M. by the Paterson Police, who took him

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[1] Monks has been granted parole by the State Parole Board, which becomes effective in June, 1972. This grant of parole does not deprive this Court of jurisdiction to entertain and decide relator's application. See, *Jones* v. *Cunningham*, 371 U. S. 236 (1963).

[2] The United States Supreme Court in this case on May 25, 1970, dismissed, per curiam, a writ of certiorari as "improvidently granted, without prejudice to any further appropriate proceedings below." *Monks* v. *New Jersey*, 398 U. S. 71 (1970).

to the police station for questioning. After one and a half hours at the police station, the officers escorted relator to various locations to unearth purses stolen in a recent rash of purse snatchings. Some purses were recovered by the police by 3:30 A.M. Police continued to question Monks until noon of the following day, and then incarcerated him in the Passaic County Children's Shelter in Wayne.

On February 18, Juvenile Court Judge Schamach gave Detectives DeSimone and Ventimiglia of the Paterson Police, upon their request, permission to question relator respecting the robbery and murder of Giovánna Giambra. This offense had occurred on November 15, 1956, in Paterson, apparently in the course of a purse snatching. Judge Schamach granted the request to interrogate relator on condition that such be done in the presence of Probation Officer Jarmolowicz, to insure that relator was "not abused in any way or taken advantage of or exhausted or placed in a position where he might say something that his physical condition probably would not allow him to say otherwise." At this juncture, the police plainly had focused their investigation on relator as a prime suspect, not only for purse snatching, but for the Giambra murder as well.

Pursuant to the Juvenile Court's approval and instructions, Detectives DeSimone and Ventimiglia questioned relator for an hour at the children shelter in the presence of Probation Officer Jarmolowicz. Relator responded that he knew of the Giambra and Weiss crimes only through newspaper reports and agreed to submit to a lie detector test. Three days later, on February 21, relator was taken to the anteroom of the Grand Jury room in

the Passaic County Courthouse for a polygraph examination to be conducted by Richard Arther. Arther admonished relator that the lie detector was capable of catching him in a lie. Moreover, the examination conducted by Arther for more than an hour was, significantly, outside of the presence or supervision of Probation Officer Jarmolowicz.

Between February 21 and the 26th, a period of five days, relator had no communication with either the police or the Probation Officer. Relator's detention in the children's shelter during this period amounted to an incommunicado confinement in that he had no contact whatever with family, friend, or lawyer, and had not been informed by the police that he could communicate with anyone. His mother attempted to find him by calling the Probation Officer and the police station, but to no avail. It was not until ten days subsequent to relator's initial arrest for purse snatching, that she learned of her son's detention through newspaper accounts of his confessions.

Finally, at 9:00 A.M. on February 26, the critical day of relator's confinement, he was taken by the police from the children's shelter in Wayne to the Passaic County Courthouse for more interrogation by the detectives. There he was given polygraph tests at varying intervals, for two hours by the examiner, Arther, who once again warned relator that the lie detector would discover the truth. Relator was then given lunch and waited in the Grand Jury room for a couple of hours where no one talked to him until the police confronted him with Harry Ogg, a neighborhood acquaintance, who stated that relator had admitted the Weiss assault to him. Relator stood silent in the face of the accusation.

Appendix B

Further polygraph tests followed for the next hour and a half. Relator then underwent an interrogation by the detectives during which he implicated himself in the Weiss offense for the first time by telling them that he struck Weiss from behind and took her pocketbook. Shortly thereafter, however, relator vehemently recanted his Weiss confession. A while later, at 6:30 P.M., relator was confronted with a second accuser, Robert Stopford, who stated in the presence of the detectives and Jarmolowicz that relator had told him about the Weiss assault. Again relator made no reply. With that, DeSimone questioned relator for about a half hour in a fatherly manner urging that he should tell the truth that he "can't fool God", and that he must "search his conscience." Relator nontheless persisted in denying his guilt of both the Weiss and Giambra offenses. Then, for the ninth time that day, February 26, relator was "put on the machine" and examined by the polygraph operator. At last, Arther declared, "You did hit her, didn't you", whereupon relator nodded his head affirmatively and said he wanted to tell DeSimone his story. Consequently, at 8:00 P.M. relator and DeSimone were left alone and he confessed orally to the Giambra crime. After having confessed, relator was advised of his right to remain silent by Detective DeSimone who told him simply that he did not have to say anything if he did not so wish, because police wanted a "voluntary statement". His formal confessions to the Weiss-Giambra offenses were transcribed and witnessed by 1:00 A.M. Thus relator had undergone some six hours of intermittent interrogation extending over fifteen hours of police custody on February 26, before he finally relented and confessed.

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The following morning, February 27, relator identified a black leather jacket, recovered by the police at his home, which he admitted he had worn on the night of the Giambra murder. Also, that day, he re-enacted the Weiss-Giambra crimes, while a policeman photographed him in various poses. However, on March 8, 1957, when relator first saw his court appointed attorney, he promptly repudiated his confessions.

Relator alleges that both his oral and written confessions of February 26, 1957, were the product of police corecion in violation of the guidelines contained in the Due Process Clause of the Fourteenth Amendment. Since relator's trial was commenced long prior to *Escobedo* v. *Illinois,* 378 U. S. 478 (1964) and *Miranda* v. *Arizona,* 384 U. S. 436 (1966), the standards set forth in those cases are inapplicable to the case at bar. *Johnson* v. *New Jersey,* 384 U. S. 719 (1966). Nevertheless, a confession is not admissible into evidence unless given voluntarily as a result of proper police investigatory procedures. It is axiomatic that no litmus paper test exists to determine the voluntariness of a confession but rather, the Court must evaluate the totality of circumstances in which it was obtained. *United States ex rel. Russo* v. *State of New Jersey,* 351 F. 2d 429 (3 Cir. 1965), vacated on other grounds, 384 U. S. 889 (1966); *Davis* v. *North Carolina,* 384 U. S. 737 (1966). Many factors converge to bear upon the issue of voluntariness, including the person's age, education, period of detention, length of interrogation, technique of conducting same, psychological pressures or other coercive means, absence of counsel, failure to advice of the right to counsel, and the right against self-incrimination. *United States ex rel. Loray* v. *Yeager,* Civil Action No. 668-67 (D. N. J.—un-

published), July 31, 1968, affd., *United States ex rel. Loray* v. *Yeager,* 446 F. 2d 1360 (3 Cir. 1971).

Relator, a boy of fifteen, was the center of a homicide investigation for eight days during which he was completely isolated from any outside assistance, including his mother. Most important is relator's long detention without any fixed time or expectation of release and respite from his incommunicado confinement. The impression conveyed to the boy was unmistakable: he would be held at the pleasure of the police until he confessed to the Weiss-Giambra attacks. Cf. *In re Gault,* 387 U. S. 1 (1967); *Johnson* v. *New Jersey,* supra. Furthermore, the technique of interrogation employed by the police was inherently coercive, especially in the juvenile setting of the instant case. Polygraph examiner Arther was as much a part of the interrogation process as were the detectives. Detectives DeSimone and Ventimiglia were guided in their questioning of relator by his reactions to the polygraph machine, which explains why he was "put on the machine" nine times during his six hours of custodial interrogation on February 26. The questioning was not continuous but "on and off", allowing for five to fifteen minute intervals in which the detectives would confer in whispered tones in the corner of the Grand Jury room beyond relator's range of hearing, but within his view. Thus, relator was subjected to the familiar "relay" method of interrogation whereby a prisoner is constantly kept off balance, if not apprehensive, by relays of different interrogators. This method cannot be overemphasized as a contributing factor to the ultimate breakdown of relator's will to resist. The effect of the lie detector as an instrument of coercion was enhanced by Arther's warning to relator that it would uncover a falsehood. Since the unreliability of lie detectors as a means

of discovering the truth is a matter of wide judicial recognition, the examiner's warning amounted to a misrepresentation of scientific fact. Though not tantamount to trickery, the misrepresentation under the circumstances was improper and a factor to be considered in connection with Due Process standards. See *State* v. *McDavitt*, 118 N. J. Super. 77 (App. Div. 1971).

Relator was advised of his right to remain silent only after he had confessed orally to the Giambra murder, eight days subsequent to when the investigation had focused on him for the murder. Needless to say, a constitutional warning coming after the prisoner has confessed is a travesty of the Fifth Amendment right against self-incrimination. Juvenile suspects in particular should be informed of their constitutional safeguards at the outset of a custodial interrogation in language that makes their rights clearly understood by them. As the Supreme Court noted in *Davis* v. *North Carolina*, supra, even where *Miranda* is inapposite, the fact that a defendant was not advised of his right to remain silent is nonetheless a significant factor in weighing the voluntariness of his statements.

Haley v. *Ohio*, 332 U. S. 596 (1948), the leading case on the voluntariness of pre-*Miranda* juvenile confessions, is dispositive of the case at bar. *Haley*, also a fifteen year old, was arrested at midnight in connection with a murder, and questioned for five hours at a police station where he confessed upon being shown confessions of his co-suspects. No friend, parent or lawyer was present at Haley's interrogation. Prior to confession, however, he signed a warning-waiver statement informing him that his confession could be used against him. Nevertheless, Haley's confession was found involuntary. Similarly, in

Gallegos v. *Colorado*, 370 U. S. 49 (1962), the confession of a fourteen year old boy suspected of assault and robbery was held involuntary. There, the defendant confessed orally to the police shortly after arrest, and signed a formal confession after six days of confinement in a juvenile hall. He also had been denied access to counsel and to family. See also, *Jordan* v. *Cardwell*, 334 F. Supp. 193 (N. D. Ohio 1971); *Ledbetter* v. *Warden, Maryland Penitentiary*, 368 F. 2d 490 (4 Cir. 1966); *Vanleeward* v. *Rutledge*, 369 F. 2d 584 (5 Cir. 1966).

Moreover, the presence of Probation Officer Jarmolowicz during the interrogation of relator cannot remove this case from the mandate of *Haley* and *Gallegos*. For Jarmolowicz plainly failed to fulfill his prophylatic purpose of insulating his charge from the pressures of a prolonged interrogation. The way in which the Probation Officer perceived his function during the investigation is disclosed by his own testimony before the Juvenile Court. Jarmolowicz testified that he gave relator "the sort of counseling I would give any boy in any juvenile court • • •", namely, "that if he really knew anything about these offenses that he should unburden himself and search his conscience • • •." Indeed, Jarmolowicz's advise to relator is indistinguishable from the paternal approach taken by Detective DeSimone who also urged relator to "search his conscience." Because the Probation Officer allied himself, however unwittingly, with the detectives in their ongoing interrogation of relator, this Court can only conclude that relator viewed Jarmolowicz merely as another interrogator rather than a guardian. *United States ex rel. Smith* v. *Yeager*, —— F. Supp. —— (D. N. J. May 14, 1971), slip opinion, pp. 38-39 (Civil Action No. 766-65), aff'd 457 F. 2d 164 (3 Cir.), cert. denied 404 U. S.

859 (1971). In addition, the Probation Officer was not with relator, (1) during the polygraph examinations; (2) when he first confessed to the Giambra offense while alone with DeSimone in the Grand Jury anteroom; and (3) during the photographed re-enactments of the Weiss-Giambra assaults. Consequently relator was alone and outside of the potentially protective presence of the Probation Officer during the most crucial periods of his custody. Jarmolowicz, in the fulfillment of his court-appointed duties, besides making it his business to be present, should have at the very least apprised relator of his right to remain silent.

Accordingly, in light of the totality of the circumstances of the case at bar this Court finds that relator's oral and written confessions were obtained by police coercion and should not have been admitted into evidence by the Juvenile Court Judge. Though the oral and written confessions were made a few hours apart, the same surrounding circumstances bore upon both confessions. *Culombe* v. *Connecticut*, 367 U. S. 568, 621 (1961). Likewise, the photographs taken on February 27, 1957, of petitioner re-enacting the Weiss-Giambra offenses are inadmissible. These re-enactments were the end product of an unbroken chain of coercive events which makes them no more voluntary than the prior confessions. *Darwin* v. *Connecticut*, 391 U. S. 346 (1968). This Court further finds that the dark leather jacket found at petitioner's home is inadmissible in that relator directed the police to go there for it just after he had completed his confessional statements. Since the confessions are involuntary, the jacket is a poisoned fruit of the prior coercive questioning which was not attenuated by intervening events. *Wong Sun* v. *United States*, 371 U. S. 471 (1963).

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It is, therefore, on this 6th day of March, 1972,

ORDERED, that a writ or habeas corpus issue, directed to respondent; execution of said writ being hereby stayed for a period of thirty (30) days from the date hereof pending a decision by the State of New Jersey to either retry relator for the offense for which he is presently confined or to effect his immediate release from custody; and it is further

ORDERED, that true copies of this Memorandum and Order be served by the United States Marshal upon the Prosecutor of Passaic County, and the Warden of the New Jersey State Prison at Rahway, New Jersey, within ten (10) days from the date hereof.

ANTHONY T. AUGELLI
United States District Judge

APPENDIX C

Opinion of the Superior Court of New Jersey, Appellate Division (March 27, 1968)

IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-1549-66

STATE OF NEW JERSEY,

Complainant-Respondent,

vs.

WILLIAM MONES,

Defendant-Appellant.

Argued February 26, 1968—Decided March 27, 1968

Before Judges KILKENNY, CARTON and COLLESTER

On appeal from Passaic County Juvenile and Domestic Relations Court

MR. RICHARD HELLER argued the cause for appellant.

MR. ARCHIBALD KREIGER, Assistant County Prosecutor, argued the cause for respondent (MR. JOHN G. THEVOS, Passaic County Prosecutor, attorney).

The opinion of the court was delivered

Appendix C

PER CURIAM

On December 11, 1957 defendant, then 15 years of age, was found guilty of two separate acts of juvenile delinquency and sentenced by the judge of the Juvenile and Domestic Relations Court to indeterminate terms therefor at the Bordentown Reformatory. He filed a timely appeal in January 1958, but suffered it to remain dormant until 1967 when he was transferred to State Prison, where he is now confined. We granted him leave on August 21, 1967 to prosecute his appeal as an indigent, assigned counsel to represent him and provided a transcript.

The two incidents were of similar pattern, though separated in time by several months and involving different victims. On February 24, 1956 the purse of Naomi Weiss was snatched. She was struck on the head with a blunt instrument when she attempted to resist and suffered serious injuries. The victim was unable to identify her assailant. On November 12, 1956 the purse of Giovanna Giambra was snatched. She too was struck over the head with a blunt instrument, but her injuries were so severe that she died the next day. This victim was also unable to identify her assailant. Both events occurred in the City of Paterson.

Defendant was taken into custody by the police on February 16, 1957 in connection with two unrelated purse snatchings. During several interviews he revealed knowledge of the Weiss incident. Finally, on February 26, 1957 he admitted that he had attacked Miss Weiss and described the attack in some detail. The police then took

him to the scene of the robbery and he reenacted the events of that evening for them. However, after this reenactment, defendant recanted and denied participation in the Weiss attack.

After further interrogation, defendant admitted his involvement in the Giambra episode and reconstructed it for the police. Being advised by the officers to tell the truth and unburden his conscience, defendant agreed to make statements concerning both attacks. A court reporter was summoned to take the statements in question and answer form. During the hour-long wait for the reporter to arrive, the police told defendant that he was being asked to give a voluntary statement and that it could be used against him. He agreed to give the statements and did so. In them he admitted committing both offenses.

It is undisputed that at no time was defendant informed that he could see an attorney or his parents. Nor did he make any such request. However, Mr. Jarmolowicz, a probation officer, was appointed by the judge of the Juvenile and Domestic Relations Court to protect defendant against any impropriety by the police. The probation officer was present throughout the police interrogations and when defendant gave his written signed statements incriminating himself. Mr. Jarmolowicz was absent only when defendant reenacted the Weiss attack and when defendant was alone with the polygraph operator. Jarmolowicz testified that defendant was not mistreated, was alert and relaxed throughout the day, and the questioning was carried on in brief sessions with frequent breaks. Defendant was being cared for at the Children's Shelter during this period.

Appendix C

I.

Defendant's first contention is that his admissions and confessions were obtained in violation of due process and were, therefore, improperly received in evidence.

The record supports the trial court's finding that the police interrogation was fair, was conducted in the presence of a court-appointed officer to insure its fairness and who testified thereto, and was not the product of force, fear or promise of any kind. The questioning was not prolonged at any one time and there were frequent breaks. The initial interrogations were not only brief but pertained primarily to the unrelated purse snatchings for which defendant had originally been taken into custody.

The statements were taken late in the evening but this was due to defendant's withholding his willingness to give them until after dinner and the delay in getting the stenographer, who did not arrive until 10:30 P.M. The statement concerning the Weiss attack was prepared from 10:45 to 11:30 P.M. From midnight until 1 A.M., the statement concerning the Giambra offense was taken. Defendant then signed both after making a few corrections.

These confessions were made long before *Escobedo* v. *Illinois*, 378 U.S. 478 (1964) and *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Defendant concedes that these cases are not applicable, not being retroactive under *Johnson* v. *New Jersey*, 384 U.S. 719 (1966). We agree with the trial court's finding that they were voluntarily made and were obtained under circumstances fundamentally fair. The court-appointed officer, who supervised the interrogation as an officer of the court, was in attendance at all

critical moments to insure fundamental fairness and verified that fact.

Defendant cites in support of his position *Haley* v. *Ohio*, 332 U.S. 596 (1948); *Gallegos* v. *Colorado*, 370 *U.S.* 49 (1962); *State in the Interest of Carlo*, 48 N.J. 224 (1966), and *In re Gault*, 387 *U.S.* 1 (1967). These cases are factually distinguishable from the instant case. In *Haley*, a confession of murder by a 15-year-old boy was held involuntary because he was questioned by the police, working in relays, hour after hour, with no one at his side to see that the police went so far and no further, to see that they stopped short of coercion. Such was not the situation here. In *Carlo*, the youths underwent continuous questioning for over ten hours, in the hostile atmosphere of a police station, while repeated efforts on the part of their parents to see them were rebuffed. In a similar way, the other cited cases may be distinguished.

In brief, the decision in each case depends upon the totality of its own circumstances. Here, no physical coercion was employed. Defendant was not subjected to long and gruelling interrogation by relays of police officers. While his parents or an attorney were not present, their presence was not sought and defendant had by his side an experienced probation officer, at the court's direction, to act as his guardian during the questioning. Defendant's versions of the attacks were fully consistent with the physical evidence. His statements were taken by an official court reporter in question and answer form and reproduced verbatim on a typewriter. Thus, there was every effort made to insure an accurate reproduction under fundamentally fair circumstances.

Appendix C

II.

Defendant's next point is that there was insufficient corroboration in the Giambra case to support a conviction.

We find to the contrary. Defendant admitted his participation in either or both attacks to ten different people, including three of his friends, his mother and several police officers. His knowledge of the particulars of each offense was too great to be mere guess work or fantasy. He knew and identified the kind of purse taken from Miss Giambra, although that purse was never found. He knew the contents of each purse. In addition, Miss Giambra described her assailant as wearing a dark leather jacket and, after defendant admitted owning such a jacket and wearing it during his attack on Miss Giambra, such a jacket was found in his home. We need not repeat other corroborating evidence expressed in the trial judge's findings.

Argument is made that although defendant admitted doing "this terrible thing," when asked by his mother, there was no showing that the "terrible thing" related to the Giambra incident. Considering the totality of the evidence and defendant's confessions of both offenses, it is manifest that the "terrible thing" embraced what his admissions specified.

III.

It is next contended that the trial court erred in permitting testimony that defendant had strangled a cat.

Assuming that this evidence should not have been admitted because it tended to show only that defendant had

a brutal nature, the admission does not warrant a reversal. The case was tried without a jury and the experienced trial judge made no use of this evidence or reference thereto in his findings. Indeed, the photograph offered at the time this testimony was adduced was later removed from the case at the request of the State. This indicates that the trial judge was actually removing from the case the entire incident about the cat. Thus, the testimony as to the strangling of a cat was harmless error, at most, and had no bearing on the issue of defendant's guilt.

IV.

The final argument made by defendant is that his present confinement at State Prison for life is illegal.

When defendant was committed on December 11, 1957 to Bordentown Reformatory, pursuant to N.J.S. 2A:4-37 (b), the commitment was for an indeterminate term. The statute, as then worded, provided no maximum period for the commitment, or any definite time for the confinement.

N.J.S. 2A:4-37(b) was amended by L. 1957 c. 220, effective January 6, 1958, to provide that the time of confinement or parole shall not extend beyond the date upon which the child attains the age of 21 years, "except, that if the adjudication of juvenile delinquency is predicated upon an offense which, if committed by a person of the age of 18 years or over, would constitute any form of homicide as defined in sections 2A:113-1, 2A:113-2, 2A:113-4 and 2A:113-5 of the New Jersey statutes then the period of confinement shall be indeterminate and shall continue until the appropriate paroling authority determines

that such person should be paroled, but in such case the period of confinement and parole shall not exceed the maximum provided by law for such offense if committed by a person of the age of 18 years or over * * *."

By reason of that amendment, the Superintendent of Bordentown Reformatory requested the Passaic County Juvenile and Domestic Relations Court to specify the crimes defendant committed, if he had been 18 years or over. After consultation with the attorneys in the case, the Juvenile Court replied on May 2, 1958 that as to the Weiss offense the crime would be atrocious assault and battery and as to Giambra it would be murder in the first degree. On the basis thereof, defendant's maximum confinement was reflected in the records as "for life."

In *State* v. *Smigelski,* 30 N. J. 513, 526-527 (1959), the question was raised whether the statute was *ex post facto* and, hence, illegal as to a sentence imposed before its effective date. The court upheld the statute as beneficial and ameliorative, in that it clarified the exact period to be served by the juvenile as opposed to the former indefinite term. Thus, defendant knows his maximum term and when he becomes eligible for parole. We are advised that defendant becomes eligible to apply for parole again in 1969.

Defendant's transfer from Bordentown Reformatory to State Prison was authorized by N.J.S.A. 30:4-85. We find no merit in any claim that this improperly affected the possibility of his parole.

The judgments are affirmed.

APPENDIX D

Order of the Supreme Court of New Jersey Denying Petition for Certification (May 28, 1968)

IN THE SUPREME COURT OF NEW JERSEY

C-214 September Term 1967

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

WILLIAM MONKS,

Defendant-Petitioner.

ON PETITION FOR CERTIFICATION ORDER DENYING PETITION—May 28, 1968

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 28th day of May, 1968.

/s/ JOHN H. GILDEA
Clerk of the Supreme Court

APPENDIX E

Amplification of the Trial Judge's Prior Oral Statement of Findings and Conclusions

PASSAIC COUNTY JUVENILE AND
DOMESTIC RELATIONS COURT

DOCKET NO. J 1359 & J 1360

THE STATE OF NEW JERSEY
IN THE INTEREST OF
WILLIAM MONKS

December 5, 10, and 11, 1957
Paterson, New Jersey

Before:

HONORABLE HUGH C. SPERNOW,
Judge.

Appearances:

CHARLES S. JOELSON, ESQ.
Deputy Attorney General for the State

J. MORTIMER RUBENSTEIN, ESQ. and
JAMES P. EVERS, ESQ.
Attorneys for the Defendant.

The Court: Mr. Joelson, I think you have presented this matter fairly, and that you have performed your duty toward the public as well as toward William Monks.

The first complaint or delinquency petition is J1359, which charges that William Monks on November 12, 1956,

in front of 195 Wall Avenue, while in the commission of an assault and robbery struck Giovanna Giambra, age twenty-five on the head with a blunt instrument causing injuries (on repeated occasions) which resulted in her death on November 13, 1956.

Now, I will first decide that matter. The oral evidence comes from a confession that William made under circumstances which were very adequately detailed in the evidence here. The judge of this Court assigned Mr. Jarmolowicz to sit with William and observe him and protect his rights during all questioning. Mr. Jarmolowicz is a Passaic County probation officer with many years experience in handling juveniles. The Court reposed this confidence in Mr. Jarmolowicz, and I have confidence in him as well, so that I know that there was no imposition upon William Monks during this questioning.

I am also impressed with the testimony of Detective DeSimone and the other officers, Detective Ventimiglia, Detective Edmond, and I am convinced that they were fair with William Monks, so that this confession in my opinion was voluntary, and I find as a fact that it was voluntary, that there were no improper inducements offered, and that there was no force or coercion of any kind.

The circumstances that he was for a rather long period —in the courthouse—on the 26th day of February is perhaps unfortunate, but the delay was satisfactorily explained as being due to various interruptions and waiting for the stenographer.

Our cases which deal with confessions mention the fact that a confession of guilt imposes some weariness and tiredness or trepidation, upon a person. But going be-

yond the confession we must consider, on the Giambra matter, the admissions to the witness Tallon, the admission orally to Detective DeSimone, and to Probation officer Jarmolowicz. The officer told him fairly, "William, if you didn't do this don't admit it." William Monks had a heart to heart talk with these men, and after all these cautions, he signed Exhibit S-6, which was the Giambra confession, and he made corrections on that in addition to marking his initials on each page. He took about twenty minutes during the course of the trial here to read the newspaper articles. He wasn't the least bit perturbed, and it's evident that he took his time in reading this statement which he signed. The statement doesn't appear to be accurate in every detail, but in the basic essential facts its accurate, and after this statement was made, as has been pointed out, he had a talk with Tallon in which he admitted the crime.

When his mother said to him at the children's shelter, "William, did you do this terrible thing?" He shook his head in the affirmative. He gave different other statements which confirmed the fact that he had confessed and confessed voluntarily.

Now, let's consider that he said actually happened. He says I read of the Giambra—in effect—situation from the newspapers. Now, that happened November 12, 1956. There is no evidence that he read any newspapers between November 12, 1956 and February 26th when he had the talk with the police, and yet if you will look at Exhibit S-16, he pointed out a spot which is almost the identical spot referred by the detective in S-25, S-25 having been taken the morning after the incident.

How could he re-enact with such detail as that merely from the newspaper articles?

Appendix E

Now, when I say that I have confidence in the officers and the probation officer, and the detectives who handled this interrogation, I mean that I don't think they put this story into William's mouth. I think this statement S-6, is his statement.

I recall Mrs. Kearns testifying that she was in the car around the corner past the nun's home a little distance from the school, and she was talking with some other women, and they were expecting to go into this school,—and the school lights went on, around the time of 8:30, and William says that after the incident of striking her, and he very graphically described that to Detective DeSimone, after striking her down in the street, 14th Avenue, that he looked down then to 14th Avenue (towards where Mrs. Kearns was and he saw people) so then he decided to go through the park in the opposite direction.

Now, it's quite strange that at that very moment, or around that time, that Mrs. Kearns says the lights went on—William Monks said he ran the other way because of the presence of people.

On November 13th, and Mr. Joelson has pointed this out, William said he went to school. He didn't go to school at all on the 13th. He didn't go the 14th, 15th or the 16th, all the other school days in that week. (The 12th was a holiday).

His father testified that he ordered William to go to his room the night of the crime. He did not stay there. He ducked out the cellar door, on the 12th of November and this places William out of the house at the time of the crime.

The mother and father were concerned about this boy, they are troubled, so they went down to the probation of-

fice the next morning (November 13) and said William is getting out of hand. I can't say that I am impressed by William's testimony on the witness stand. I don't think he tells the truth.

The Giambra incident was a brutal murder and I judge William Monks delinquent and hold him responsible for that incident. I find the evidence establishes this beyond a reasonable doubt.

Now, with respect to the Weiss affair. The Weiss affair is case number J 1360, and it charges that on February 24, 1956 at about 10:10 p.m. on East 31st Street between Broadway and 13th Avenue, William Monks did forcibly strike Naomi Weiss on the head with a blunt instrument causing a deep laceration which required fifteen (15) sutures, and resulting in her hospitalization for a period of between six and seven weeks, and further that he did steal and carry away her pocketbook containing thirty dollars, an elgin wrist watch and various other articles.

All the factual determinations that I have made generally with respect to the confessions hold true with respect to the Weiss confessions.

We have the admission of William, that he and Stopford went into 465 15th Avenue on other occasions and used the bathroom there, and isn't it peculiar or a strange coincidence that the footsteps in the snow from the scene of the Weiss assault led to this house?

His father said it's a little strange that he ran in front of his house, but the physical characteristics at 10 o'clock at night are such that with the trees and the general characteristics there that he wouldn't be noticed.

Appendix E

An item that is similar as far as William's testimony and Miss Weiss' testimony is concerned, was that she indicated that the footsteps came from over her right shoulders. This would mean if she were walking north on the westerly side of East 31st Street towards Broadway, that would be the direction in which Williams would approach her if he were hiding behind the tree which he indicated in one of these photographs.

Williams' mother testified. She said we had discussed this Weiss case rather infrequently in the house. William say this is not so; he said he didn't know anything about the Weiss case.

But again, you have the corroborating evidence with respect to the contents of the purse, the admissions of Ogg and Stopford and the confessions.

Now, William Monks doesn't say with respect to the Weiss matter that he read about that in the newspaper. He would have us believe that the detectives told him the complete story, that Mr. Jarmolowicz, the officer appointed by the Court to protect his rights, stood by and let these detectives impose upon William and I find that this is not so.

I find that when he pointed out the location of the Weiss offense that he did so because he knew the place where it occurred, and because he was the party responsible for the commission of the offense.

You can't possibly reconcile his story that he didn't know about the Weiss affair at all with the evidence given by Ogg and Stopford.

I find that S-5 is a voluntary statement and was taken under circumstances that were fair to the defendant. I

don't say that I completely approve of the incident, all the incidents with respect to the lie detector test, but I don't think in this case that any harm was done to the rights of the defendant, and I judge him to be a delinquent because of the circumstances of the Weiss case. And I find that the evidence establishes the guilt of William Monks beyond a reasonable doubt, with reference to the Weiss crime.

Now, on the offense J 1359, which is the Giambra matter, the disposition will be that William Monks will be committed to the New Jersey Reformatory at Bordentown for indeterminate term, and on the Weiss case, which is J 1360 the disposition will be that the said William Monks will be committed to the Reformatory at Bordentown for an indeterminate term.

This is the institution where he has been since Judge Schamach sentenced him there on March 20th, and the reason for that disposition at that time was so that he would get psychiatric treatment, and it will be noted in a communication from the Court to the authorities at Bordentown that it is expected that such treatment will be given. The Menlo report, or copies of them would be submitted to Bordentown.

Now, it's in the contemplation of the Court that he may from time to time be transferred from one institution to another as the law and the rules of the court may provide. You have read Mr. Joelson, the Menlo reports, and counsel, you have had an opportunity to see the Menlo reports, and I can't see that there are any other provisions that can be made at this time with respect to his rehabilitation other than I have indicated in what I have said as far as sentencing is concerned.

Appendix E

Now, Mr. Evers and Mr. Rubenstein want a general objection to my findings which is noted.

Mr. Rubenstein: Correct, sir.

The Court: The necessary papers for transmittal to this institution will be executed by the clerk. That disposes of the matter.

HUGH C. SPERNOW,
Judge.

APPENDIX F

Order of the Supreme Court of the United States Granting Petition for Writ of Certiorari (May 19, 1969)

SUPREME COURT OF THE UNITED STATES

No. 712 Misc., October Term, 1968

WILLIAM MONKS,

Petitioner,

v.

NEW JERSEY

On petition for writ of Certiorari to the Supreme Court of the State of New Jersey.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—May 19, 1969

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1406 and placed on the summary calendar.

Appendix F

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

APPENDIX G

Per Curiam Opinion of the Supreme Court of the United States

SUPREME COURT OF THE UNITED STATES

No. 127—OCTOBER TERM, 1969

WILLIAM MONKS,

Petitioner,

v.

STATE OF NEW JERSEY

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

May 25, 1970

PER CURIAM.

Having scrutinized the record and considered the briefs and oral arguments submitted on both sides, we are satisfied that petitioner's claim of coercion respecting his confession, given by him over 12 years ago upon his apprehension as an alleged juvenile delinquent, does not merit the plenary review which we thought it might deserve at the time petitioner's *pro se* petition for certiorari was granted. 395 U. S. 903. The other claims tendered in such petition fare no better.

The further claim advanced by petitioner's appointed counsel in this Court respecting the alleged unconstitutional application of N.J.S. 2 A, 4-37 (b) has been raised for the first time upon this writ and the state courts have had no opportunity to pass upon it.

Accordingly we conclude that the writ of certiorari should be dismissed as improvidently granted, without prejudice to any further appropriate proceedings below.

It is so ordered.

Appendix G

Dissenting Opinion

Mr. Justice Marshall, with whom Mr. Justice Douglas joins, dissenting.

Petitioner, a 15-year-old boy, was arrested at 1 o'clock in the morning of February 16, 1957, removed to the police station and questioned by detectives for several hours about two purse snatching incidents. He was then held in confinement in the Children's Shelter for 10 days during which time he was questioned at least three times by two detectives in the presence of a juvenile probation officer. Further questioning began on other crimes including two murders in the same area as the purse snatchings.

During the entire 10-day period this 15-year-old boy was without advice of his parents, lawyer, or friends. Indeed, his mother first learned he was in custody after he confessed to the two murders. During the entire 10-day period petitioner was never told he had a right to remain silent, or to refuse to answer the questions by the two detectives.

The end came on February 26, 1957. Petitioner arose at 7 o'clock in the morning, questioning began at 10 o'clock and continued off and on for 15 hours before the confession was typed. During this period he was moved from the Children's Shelter to the courthouse, the grand jury room and an adjacent room. He was given several lie detector tests and confronted with alleged witnesses. He had no sleep. He was given sandwiches for his lunch and dinner.

Certainly, such treatment so clearly violates the holdings of *Haley* v. *Ohio,* 332 U. S. 596 (1948); *Culombe* v. *Connecticut,* 367 U. S. 568 (1961); *Haynes* v. *Washington,* 373 U. S. 503 (1963); and *Greenwald* v. *Wisconsin,* 390 U. S. 519 (1968), as to require a reversal in this case.

APPENDIX H

Order of the Supreme Court of the United States Dismissing Writ of Certiorari (May 25, 1970)

SUPREME COURT OF THE UNITED STATES
No. 127—OCTOBER TERM, 1969

WILLIAM MONKS,

Petitioner,

v.

STATE OF NEW JERSEY

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

May 25, 1970

ON WRIT OF CERTIORARI to the Superior Court of the State of New Jersey, Appellate Division.

THIS CAUSE came on to be heard on the transcript of the record from the Superior Court of the State of New Jersey, Appellate Division, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the writ of certiorari to the Superior Court of the State of New Jersey, Appellate Division, in this cause be, and the same is hereby, dismissed as improvidently granted without prejudice to any further appropriate proceedings below.

May 25, 1970